

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JOHN L. LOTTER,)	
)	
Petitioner,)	
)	No. 4:04-CV-03187-RGK
v.)	
)	
BRIAN GAGE, Warden,)	
Tecumseh State Correctional Institution,)	
)	
Respondent.)	

**PETITIONER'S MOTION TO ATTEND ORAL ARGUMENT AND REQUEST FOR
TRANSPORT ORDER**

Petitioner, John L. Lotter, by and through undersigned counsel, respectfully moves this Court to grant his request to attend oral argument in this matter and for approval of the proposed transport order, attached hereto. In support of this motion, Petitioner states as follows:

1. Petitioner is a Nebraska death-sentenced prisoner. He is currently incarcerated at the Tecumseh State Correctional Institution located in Tecumseh, Nebraska.
2. On June 4, 2015, this Court scheduled for oral argument the issue of whether the Nebraska legislature's repeal of the death penalty affects undersigned counsel's continued representation of Petitioner. (Dkt. #127). The matter is set for a one-hour oral argument on Tuesday, September 15, 2015 at 12:00 noon, in Courtroom No. 2, Robert V. Denney Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebraska. (*Id.*).
3. The question of whether and how the Nebraska legislature's repeal of the death penalty affects these proceedings is potentially dispositive of the ultimate issue in Petitioner's case, namely, whether or not Petitioner will continue to face the death penalty. Given the unprecedented situation which presently exists, undersigned counsel respectfully contend that

Petitioner's federal and state constitutional due process rights to life and liberty are implicated by the outcome of these proceedings. *See generally United States v. Gagnon*, 470 U.S. 522, 526 (1985) (*per curiam*). Therefore, this Court should allow Petitioner to attend the September 15, 2015 oral argument in Lincoln, Nebraska.

WHEREFORE, for the foregoing reasons, counsel for Petitioner respectfully request that this Court approve Petitioner's attendance at the oral argument in this matter that is scheduled for September 15, 2015 at 12:00 noon in Lincoln, Nebraska and order the warden of the Tecumseh State Correctional Institution in Tecumseh, Nebraska or his designee, to transport Petitioner to and from the Robert V. Denney Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebraska, on that date.

Respectfully submitted this 8th day of September, 2015.

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TRANSPORT ORDER

**TO: BRIAN GAGE, WARDEN, TECUMSEH STATE CORRECTIONAL
INSTITUTION, OR HIS DESIGNEE**

IT IS HEREBY ORDERED AND ADJUDGED THAT Brian Gage, Warden, Tecumseh State Correctional Institution, or his designee, shall transport Petitioner, John L. Lotter, Inmate #47903, from the Tecumseh State Correctional Institution, 2725 Nebraska 50, Tecumseh, Nebraska, to Courtroom No. 2, Robert V. Denney Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebraska, on Tuesday, September 15, 2015, to attend the oral argument scheduled at 12:00 noon for one hour. The Warden or his designee shall immediately transport Petitioner back to Tecumseh State Correctional Institution upon the conclusion of the proceedings in this matter on that date.

SO ORDERED this _____ day of September, 2015.

Richard G. Kopf, Senior United States District Judge
District of Nebraska

CERTIFICATE OF SERVICE

This will certify that on September 8, 2015, this Motion and proposed Transport Order has been electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

/s/Rebecca E. Woodman
Dated: September 8, 2015
Kansas City, MO